

BEFORE THE
SHORELINES HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF A SHORELINE)
SUBSTANTIAL DEVELOPMENT PERMIT)
DENIED BY SAN JUAN COUNTY TO)
MR. & MRS. HARRISON J. HART,)
MR. & MRS. ROBERT M. HAWES,)
MR. & MRS. HARRISON J. HART III,)
JEFFREY K. HART & STEVEN M. HART,)
MR. & MRS. HARRISON J. HART,)
MR. & MRS. ROBERT M. HAWES,)
MR. & MRS. HARRISON J. HART III,)
JEFFREY K. HART & STEVEN M. HART,)
Appellants,)
v.)
SAN JUAN COUNTY,)
Respondent.)

SHB No. 83-7

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

This matter, the request for review of a denial of an application for a substantial development permit came before the Shorelines Hearings Board, David Akana (presiding), Gayle Rothrock, Chairman, Nancy R. Burnett, A. M. O'Heara and Lawrence J. Paulk at a hearing in Friday Harbor on July 28, 1983.

1 Appellants were represented by their attorney, Jerry Spoonemore;
2 respondent was represented by Gene Knapp, Prosecuting Attorney. Court
3 reporter Betty Koharski recorded the proceeding.

4 Having heard or read the testimony, having examined the exhibits,
5 and having considered the contentions of the parties, the Board makes
6 these

7 FINDINGS OF FACT

8 I

9 This matter involves the proposed construction of a 139 foot dock
10 on lots 57 and 58 of Friday Island Estates Plat on Friday Island.
11 Friday Island is a heavily wooded 3/4 mile long, 80 acre island
12 located near Friday Harbor, San Juan Island.

13 II

14 Friday Island Estates completely covers Friday Island. The plat
15 was approved before the master program for San Juan County became
16 effective. It is a residential and recreational subdivision
17 containing 60 single-family waterfront lots, a wooded common area, a
18 community dock and facilities, and a gravel road to each lot. No
19 automobiles are allowed on the island, except for vehicles used during
20 construction activities, a fire truck, and a caretaker vehicle. Land
21 access on the island is by golf carts or by walking. Land access to
22 the Hawes/Hart lots is on a 0.4 mile walk or ride over a rolling
23 gravel road. Water access to the island is by watercraft to the
24 community dock, or for some 15 lots, to a private dock. Not every lot
25 can have a dock because of steep exposed cliffs and weather exposure.

26 There are presently 34 homes on the island. Seventy-eight boats
27

1 are now based on the island, of which eight are permanently moored
2 elsewhere.

3 III

4 In September 1982, appellants Mr. and Mrs. H. J. Hart, Jim and Kit
5 Hart, Jeff Hart, Steven Hart (lot 57) and Mr. and Mrs. Robert Hawes
6 (lot 58) applied for a substantial development permit to build a dock
7 to serve two single-family lots. (Application No. 24 3J 82.) The
8 proposed dock would consist of a 40 foot pier, a 40 foot ramp, and two
9 25 foot by 8 foot floats laid end-to-end. The drawing discloses that
10 10 pilings would be driven.

11 IV

12 Appellants unsuccessfully sought the use of an existing dock
13 serving lots 54, 55, and 56 to the west. The applicants also sent
14 notice to the adjoining owner to the east (lots 59 and 60) who
15 declined to participate in a joint use dock. A total of seven lots
16 were considered for joint use of an existing or a proposed dock.

17 The appellants entered into a joint use agreement to build, use
18 and maintain the proposed dock.

19 V

20 A declaration of nonsignificance was issued by the county planning
21 department.

22 VI

23 If constructed and used as described, the dock is not, by itself,
24 alleged to have adverse environmental effects. However, the
25 cumulative impact of many such small docks could be adverse.

26 FINAL FINDINGS OF FACT,
27 CONCLUSIONS OF LAW & ORDER
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VII

In May, 1981, Friday Island Estates Maintenance Commission, through R. H. Hawes, applied for a permit to double the available moorage space of the community moorage facility located on the southwest side of the island. The application covered the anticipated moorage needs for the foreseeable future. Each of the 60 lots in the plat was allowed 16 feet of moorage space. The expanded facility was expected to preclude the need for additional individual docks to serve lot owners.

The community dock expansion was completed except for the construction of 6 deep keel moorage spaces. The cost of expansion to date is \$35,000.

The community dock has always had space available for mooring owners' watercraft. This moorage availability experience has occurred despite a "first come, first served" policy of the community facility.

VIII

The Harts and Hawes collectively own seven motorized and non-motorized boats of various sizes. The private moorage sought would provide them with direct access to their properties and respective houses and allow moorage of four or five of their seven boats. Police, fire and other governmental services from Friday Harbor would be more accessible to their properties.

IX

The San Juan County Shoreline Master Program (as amended) (SMP) provides regulations for piers and docks (Section 5.08). The regulations

1 provide a preference for multiple use and expansion of existing
2 facilities, mooring buoys, and moorage floats over new docks and
3 piers. Section 5.08 (1, 2 and 3). It was uncontroverted that moorage
4 buoys and floats were not always feasible at the instant site because
5 of the debris and rocky shore. It was not shown that the expanded
6 existing facilities at the community dock did not provide the access
7 commonly associated with island living. It was shown that the
8 proposed dock would provide use for two single-family lots.

9 X

10 Section 5.08(4) of the SMP regulations provides:

11 Applications for non-exempt docks and piers
12 associated with single-family residences shall not be
approved until:

- 13 a. it can be shown by the applicant that existing
14 facilities are not adequate or feasible for use;
15 b. alternative moorage is not adequate or feasible;
16 c. the possibility of a multiple-owner or
multiple-user facility has been thoroughly
17 investigated.
18 d. the applicant shall have the burden of providing
the information requested for items a, b and c above,
19 and shall provide this information in a manner
prescribed by the Administrator.
20 e. Applicants who contemplate shared dock facilities
shall submit a written agreement to be used with the
21 proposed dock users, indicating the terms of multiple
use, the proportion of shared construction costs and
22 upkeep costs and liability. This will be sent by
certified mail by the applicant to his neighbors with
his letter of intention and request for information
on the possibility of joint use; with 30 days for
response by certified mail.

23 The provision effectively prohibits non-exempt docks and piers
24 associated with single-family residences unless an applicant meets
25 items a, b and c. The community dock provides adequate facilities to

26 FINAL FINDINGS OF FACT,
27 CONCLUSIONS OF LAW & ORDER
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1 service the entire plat of Friday Island Estates. Item "a" was
2 therefore not met. Alternative moorage by buoys or floats is not
3 always feasible as earlier discussed. Item "b" was met. Appellants
4 substantially complied with the multiple owner/user investigation
5 requirement of item "c." The proposed dock is a multiple owner/user
6 facility investigated over seven lots.

7 XI

8 Section 5.08(8) of the SMP regulations, which applies to
9 waterfront subdivisions approved after the effective date of the SMP,
10 is not applicable to this case. The regulation makes clear, however,
11 that such subdivisions shall use a single, joint use moorage facility
12 unless conditions prevent it. Individual docks and piers in such a
13 subdivision are prohibited, unless conditions warrant more than one
14 moorage facility.

15 XII

16 The policy for docks and piers in section 5.08(6) declares an
17 intent to spare the county from the "porcupine effect" created by many
18 private docks and piers on the same shoreline by preferring private
19 community structures and joint use of a single structure.

20 XIII

21 Any Conclusion of Law which should be deemed a Finding of Fact is
22 hereby adopted as such.

23 From these Findings the Board comes to the following
24
25

26 FINAL FINDINGS OF FACT,
27 CONCLUSIONS OF LAW & ORDER
SHB No. 83-7

1 CONCLUSIONS OF LAW

2 I

3 The Shoreline Management Act (SMA) provides that a permit shall
4 issue when the development proposed is consistent with the applicable
5 master program and the provisions of the SMA. RCW 90.58.130(2)(b).

6 II

7 The proposed substantial development was not shown to be
8 consistent with the SMP regulations, Section 5.08(1 and 4(a)).

9 III

10 The proposed substantial development, being inconsistent with the
11 SMP, is inconsistent with the provisions of the SMA. It is apparent
12 that the county has a planned, rational SMP addressing piers and docks
13 on its shorelines. It is not this Board's function to ignore the
14 explicit provision of the SMP in order to seize a result. Rather, the
15 Board must follow the applicable law. If a particular result was not
16 intended, the proper procedure is to amend the law, in this instance,
17 the SMP. However, we are convinced that the county fully intended
18 that the SMP have this result, and conclude that its action should be
19 affirmed.

20 IV

21 Any Finding of Fact which should be deemed a Conclusion of Law is
22 hereby adopted as such

23 From these Conclusions the Board enters this
24
25

26 FINAL FINDINGS OF FACT,
27 CONCLUSIONS OF LAW & ORDER
SHB No. 83-7

ORDER

The action of the San Juan County denying Substantial Development Permit Application Number 24 SJ 82 is affirmed.

DATED this 16th day of ~~August~~ ^{September}, 1983.

SHORELINES HEARINGS BOARD

David Akana

DAVID AKANA, Lawyer Member

Gayle Rothrock

GAYLE ROTHROCK, Chairman

Nancy R. Burnett

NANCY R. BURNETT, Member

Rodney M. Kerslake

RODNEY M. KERSLAKE, Member

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v.)
SAN JUAN COUNTY,)
Respondent.)

SHB No. 83-7

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER
(MINORITY OPINION)

This matter, the request for review of a denial of an application for a substantial development permit came before the Shorelines Hearings Board, David Akana (presiding), Gayle Rothrock, Chairman, Nancy R. Burnett, A. M. O'Meara and Lawrence J. Faulk at a hearing in Friday Harbor on July 28, 1983.

1 Appellants were represented by their attorney, Jerry Spoonemore;
2 respondent was represented by Gene Knapp, Prosecuting Attorney. Court
3 reporter Betty Koharski recorded the proceeding.

4 Having heard the testimony, having examined the exhibits, and
5 having considered the contentions of the parties, the Board makes these

6 FINDINGS OF FACT

7 I

8 This matter involves the proposed construction of a 139 foot dock
9 on lots 57 and 58 of Friday Island Estates Plat on Friday Island.
10 Friday Island is a heavily wooded 3/4 mile long, 80 acre island
11 located near Friday Harbor, San Juan Island. The proposed dock would
12 be situated northwest of an existing dock between lots 55 and 54.
13 Appellant has demonstrated that the dock has been designed to minimize
14 the visual impact from it in this shoreline.

15 II

16 Friday Island Estates completely covers Friday Island. The plat
17 was approved before the master program for San Juan County became
18 effective. It is a residential and recreational subdivision
19 containing 60 single-family waterfront lots, a wooded common area, a
20 community dock and facilities, and a gravel road to each lot. No
21 automobiles are allowed on the island, except for vehicles used during
22 construction activities, a fire truck, and a caretaker vehicle. Land
23 access on the island is by golf carts or by walking. Land access to
24 the Hawes/Hart lots is on a 0.4 mile walk or ride over a rolling
25 gravel road. Water access to the island is by watercraft to the

26 MINORITY OPINION
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1 community dock. In addition there are approximately fifteen private
2 docks on Friday Island. Testimony indicated that these people also
3 utilize the community dock. Approximately one-half the lots will not
4 be able to build docks because of steep exposed cliffs and weather
5 exposure.

6 There are presently 34 homes on the island. Seventy-eight boats
7 are now based on the island, of which eight are permanently moored
8 elsewhere. Friday Island is designated a suburban environment by the
9 San Juan Shoreline Master Program (SJSMP).

10 III

11 On September 21, 1982, appellants Mr. and Mrs. H. J. Hart, Jim and
12 Kit Hart, Jeff Hart, Steven Hart (lot 57) and Mr. and Mrs. Robert
13 Hawes (lot 58) applied for a substantial development permit to build a
14 dock to serve two single-family lots. (Application No. 24 SJ 82.)
15 The proposed dock would consist of a 40 foot pier, a 40 foot ramp, and
16 two 25 foot by 8 foot floats laid end-to-end. The drawing discloses
17 that 10 pilings would be driven.

18 IV

19 Appellants unsuccessfully sought the use of an existing dock
20 serving lots 54, 55, and 56 to the west. The applicants also sent
21 notice to the adjoining owner to the east (lots 59 and 60) who
22 declined to participate in a joint use dock. However both parties on
23 either side of appellant's property support Mr. Hart's project. A
24 total of seven lots were considered for joint use of an existing or a
25 proposed dock.

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1 The appellants entered into a joint use agreement to build, use
2 and maintain the proposed dock.

3 V

4 A declaration of nonsignificance was issued by the county planning
5 department. On January 18, 1983, the application was denied by the
6 county commissioners. From this action the appellants appealed to
7 this Board on February 17, 1983.

8 VI

9 If constructed and used as described, the dock is not, by itself,
10 alleged to have adverse environmental effects. However, some people
11 think that the cumulative impact of many such small docks could be
12 adverse.

13 VII

14 The Board of County Commissioners denied issuance of subject
15 permit for a number of reasons. One of those reasons was the fact
16 that they had previously granted a permit (Application No. 105J81) to
17 Friday Island Estates for expansion of the community docks and were
18 left with the impression that this expansion would serve the moorage
19 needs of Friday Island. However this specific point was never
20 discussed by either of the parties at the time. Testimony and site
21 inspection on July 28, 1983, showed that the location of their
22 property precluded use by appellant of the community dock and that no
23 local access was reserved to allow appellant access to other docks in
24 the area; nor was any provision made in the community dock permit
25 which would require appellant to utilize the moorage space at the
26 community dock.

VIII

The Harts and Hawes collectively own seven motorized and non-motorized boats of various sizes. The private moorage sought would provide them with direct access to their properties and respective houses and allow moorage of four or five of their seven boats. Police, fire and other governmental services from Friday Harbor would be more accessible to their properties.

IX

The San Juan County Shoreline Master Program (as amended) (SMP) provides regulations for piers and docks (Section 5.08). The regulations provide a preference for multiple use and expansion of existing facilities, mooring buoys, and moorage floats over new docks and piers. Section 5.08 (1, 2 and 3). It was uncontroverted that moorage buoys and floats were not feasible at this site because of the debris and rocky shore. It was not shown that the expanded existing facilities at the community dock provided reasonable access to the two lots for which application is made. It was shown that the proposed joint use dock would provide use for two single-family lots.

X

Section 5.08(4) of the SMP regulations provides:

Applications for non-exempt docks and piers associated with single-family residences shall not be approved until:

- a. it can be shown by the applicant that existing facilities are not adequate or feasible for use;
- b. alternative moorage is not adequate or feasible;
- c. the possibility of a multiple-owner or multiple-user facility has been thoroughly investigated.

1 d. the applicant shall have the burden of providing
2 the information requested for items a, b and c above,
3 and shall provide this information in a manner
4 prescribed by the Administrator.

5 e. Applicants who contemplate shared dock facilities
6 shall submit a written agreement to be used with the
7 proposed dock users, indicating the terms of multiple
8 use, the proportion of shared construction costs and
9 upkeep costs and liability. This will be sent by
10 certified mail by the applicant to his neighbors with
11 his letter of intention and request for information
12 on the possibility of joint use; with 30 days for
13 response by certified mail.

14 These provisions effectively prohibit non-exempt docks and piers
15 associated with single-family residences unless an applicant meets
16 items a, b and c. The community dock is not feasible to service the
17 two lots for which application is made because of their location.
18 Item "a" was therefore met. Alternative moorage by buoys or floats is
19 not feasible as earlier discussed. Item "b" was met. Appellants
20 substantially complied with the multiple owner/user investigation
21 requirement of item "c." The proposed dock is a multiple owner/user
22 facility investigated over seven lots.

23 XI

24 The policy for docks and piers in section 5.08(6) declares an
25 intent to spare the county from the "porcupine effect" created by many
26 private docks and piers on the same shoreline by preferring private
27 community structures and joint use of a single structure. However the
28 Board finds that the commissioner's unstated "intention" as expressed
29 in the granting of the community dock application is insufficient to
30 constitute an impediment to appellant's application and the granting
31 of a substantial development permit.

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1 XII

2 Any Conclusion of Law which should be deemed a Finding of Fact is
3 hereby adopted as such.

4 From these Findings the Board comes to the following

5 CONCLUSIONS OF LAW

6 I

7 The Shoreline Management Act (SMA) provides that a permit shall
8 issue when the development proposed is consistent with the applicable
9 master program and the provisions of the SMA. RCW 90.58.180(2)(b).

10 II

11 The proposed substantial development was shown to be consistent
12 with the SMP regulations, Section 5.08(1 and 4(a)).

13 III

14 The proposed substantial development, being consistent with the
15 SMP, is therefore inconsistent with the provisions of the SMA. It is
16 apparent that the county has a SMP addressing piers and docks on its
17 shorelines. We agree with the majority that it is not this Board's
18 function to ignore the provisions of the SMP in order to seize a
19 result, and that the Board must follow the applicable law. However in
20 this case the conditions and provisions of the community dock permit
21 are insufficient reasons in and of themselves to prevent Mr. Hart from
22 receiving a permit. Mr. Hart was not an applicant in the community
23 dock application, nor was the community dock permit sufficiently
24 conditioned to require Mr. Hart and Mr. Hawes to utilize moorage at
25 the community dock. Further we believe the application filed with San

26 MINORITY OPINION

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1 Juan County is complete in all respects as a joint use dock, which is
2 permitted in a suburban environment and as such meets the requirements
3 of local ordinance and state law.

4 IV

5 Any Finding of Fact which should be deemed a Conclusion of Law is
6 hereby adopted as such.

7 From these Conclusions the Board enters this

8 ORDER

9 The decision of the San Juan County Commissioners in regard to the
10 substantial development permit of Mr. Harrison J. Hart is reversed and
11 the matter is remanded to the County for permit issuance consistent
12 with this decision.

13 DATED this 17th day of September, 1983.

14 SHORELINES HEARINGS BOARD

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18 LAWRENCE J. PAULK, Member

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20 A. H. O'NEARA, Member

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26 MINORITY OPINION
27 SHB No. 83-7

1 ADDENDUM TO MAJORITY OPINION.

2 The minority opinion honors the majority with the liberal use of
3 its opinion. However, factual perceptions and conclusions separate
4 the results. The evidentiary facts upon which the majority bases its
5 opinion can be found in the record.

6 DATED this 19th day of September, 1983.

7 SHORELINES HEARINGS BOARD

8
9 David Akana
10 DAVID AKANA